IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 25, 2009

STATE OF TENNESSEE v. CARRIE A. SHULTS

Appeal from the Circuit Court for Cocke County
Nos. 0739, 0740, 0741, 0742, 0743 Ben W. Hooper, II, Judge

No. E2008-01121-CCA-R3-CD - Filed June 24, 2009

The Defendant, Carrie A. Shults, pled guilty to five counts of the sale of one-half gram or more of cocaine, a Class B felony, and five counts of the delivery of one-half gram or more of cocaine, a Class B felony. The trial court merged the convictions for delivery into the sale convictions. The Defendant received five concurrent eight-year sentences as a Range I, standard offender, for an effective sentence of eight years. On appeal, the Defendant contends that the sentence of confinement was excessive and inconsistent with the purposes of sentencing, that the trial court failed to weigh all factors properly, and that the record does not contain proof of deterrence. In view of the Defendant's failure to include the transcript of the guilty plea hearing in the appellate record, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Thomas V. Testerman, Newport, Tennessee, for the appellant, Carrie A. Shults.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; James B. Dunn, District Attorney General; and Amanda H. Inman, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

We take the following facts from the sentencing hearing transcript and the presentence report depicting five controlled drug purchases using a confidential informant and an undercover agent from the Drug Task Force. On January 5, 2007, a confidential informant purchased more than 0.5 grams of cocaine from the Defendant at her residence. On January 9, 2007, either the undercover agent or the confidential informant purchased more than one-half gram of cocaine from the Defendant at her residence. On January 30, 2007, the undercover Drug Task Force agent purchased in excess of one-half gram from the Defendant in her house. On January 16, 2007, the undercover agent purchased over one gram of cocaine from the Defendant in her residence. On February 16,

2007, the undercover agent purchased more than one-half gram of cocaine from the Defendant in her residence.

No testimony was presented at the sentencing hearing. The trial court stated that it did not believe the Defendant's claim that she sold drugs to purchase necessities for her family, that it did not accord much weight to a claim of duress, and that her sales were not a single, isolated event. See T.C.A. § 40-35-113(7), (12), (13) (2006). The trial court also stated that although "[c]riminal behavior has been in [the Defendant's] life for a long time," the court would have compassion on the Defendant because she both sought addiction help and maintained a job. The court also said it would not impose a sentence greater than the minimum in the range. See T.C.A. § 40-35-114(1). The trial court imposed five concurrent eight-year sentences of confinement after finding that confinement would deter others in the community from committing similar offenses and would avoid depreciating the seriousness of the offense. T.C.A. § 40-35-103(1)(B).

The Defendant contends that her sentence to confinement was excessive and inconsistent with the purposes of sentencing when considering her lack of criminal record up to the current convictions, her "fairly good" social history as seen through her employment and educational records, and her potential for rehabilitation. She claims that the trial court failed to weigh all factors properly and that the record does not contain proof of deterrence. The State responds that the trial court properly imposed a sentence of incarceration.

"A sentence must be based on evidence in the record of the trial . . . ." T.C.A. § 40-35-210(f) (2006). In the present cases, the Defendant pled guilty. On appeal, she had "a duty to prepare a record which conveys a fair, accurate and complete account of what transpired with respect to the issues forming the basis of the appeal." State v. Ballard, 855 S.W.2d 557, 560 (Tenn. 1993) (citing State v. Bunch, 646 S.W.2d 158, 160 (Tenn. 1983)). Although the Defendant challenges the manner of serving her sentences, the record does not contain the basis for imposing the sentences as reflected in the plea hearing transcript. "Where the record is incomplete and does not contain a transcript of the proceedings relevant to an issue presented for review, or portions of the record upon which the party relies, an appellate court is precluded from considering the issue." State v. Ballard, 855 S.W.2d at 560-61 (citing State v. Roberts, 755 S.W.2d 833, 836 (Tenn. Crim. App. 1988)). We have no way of knowing what evidence, if any, was presented at the plea hearing, and we are foreclosed from the de novo review we are required to make. We must presume the trial court's sentencing determinations and application of law to the facts were correct. See State v. Roberts, 755 S.W.2d at 836; State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991). The Defendant is not entitled to relief.

Based on the foregoing and the record as a whole, we affirm the judgments of the trial court.

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JOSEPH M. TIPTON, PRESIDING JUDGE